IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.209/1994
WITH
MISC. CIVIL APPLICATION NO.327 OF 2002
WITH
MISC. CIVIL APPLICATION NO.515/2003.

Shri Camilo Piedade Colaco,
(Since deceased, through his
legal heirs:)

1a. Mrs. Angelina F. Colaco,

1b. Mr. Vincent Colaco,

1c. Mrs. Plasina Colaco,

1d. Mr. Alban Colaco,

1e. Mrs. Genevieve Colaco,

1f. Mrs. Susan Joanes,

1g. Mr. Bosco Joanes,

1h. Mrs. Rita S. Dias,

1i. Miss Lana J. Colaco,
residing at Grande Pulavdo,
Banaulim, Salcete, Goa. .... Petitioners.

V/s.

1) Shri Chandrakant S. Keni,
major, Editor, Daily Rashtramat,
residing at House No.90,
Aquem Alto, Margao, Goa.

2) The Court of the Additional
Rent Controller-II, South Goa,
Margao-Goa.

3) The Administrative Tribunal,
Goa, Daman & Diu, by its Chairman,
having Office at Panaji, Goa. .... Respondents.

Mr. M.S. Sonak, with Mr. E.P. Lobo, Advocates for the petitioners.

Mr. M.S. Usgaonkar, Sr. Advocate with Ms. Swati Kamat wagh, Advocate for respondent No.1.

CORAM : A.M. KHANWILKAR, J.

DATE : DECEMBER 5, 2003.

ORAL JUDGMENT :

This writ petition under Article 227 of the Constitution of India, takes exception to the Judgment and Order dated January 31, 1994 passed by the Administrative Tribunal, in Eviction Appeal No.19/1991. The petitioners are successors-in-title of the original petitioner Shri Camilo Piedade Colaco. The original petitioner was landlord in respect of House No.90 (Northern Part) (suit premises) at Aquem Alto, Margao. Respondent No.1 was inducted in the said premises as tenant on monthly rent basis. The original petitioner, by legal notice, called upon the respondent to vacate and hand over the suit premises. Since the respondent did not vacate the suit premises, the original petitioner instituted eviction petition being case No.BLDG/102/ ARC-II/1986 before the Rent Controller/Dy. Collector, South Division, at Margao, initially on two grounds and later on added one more ground, namely (a) bona fide personal requirement of the landlord and his family; (b) tenant acquiring a vacant house at Porvorim, Bardez; and (c) sub-letting by the tenant. The said petition was allowed by the Rent Controller by Judgment and Order dated January 29, 1991 on the first two grounds, though. Against that decision, the respondent carried the matter

in appeal before the Administrative Tribunal of Goa, Daman and Diu at Panaji by way of Eviction Appeal No.19/1991. By the impugned Judgment and Order, the appeal preferred by the respondent was allowed and instead the order of eviction passed by the Rent Controller on the ground of bonafide requirement of the landlord and his family as well as the tenant having secured alternative accommodation, was set aside. As a result, the eviction petition came to be dismissed by the impugned Judgment and Order. Against this decision of the appellate Authority, the present writ petition has been filed. Accordingly, only abovesaid two grounds are pressed into service before this Court for eviction of the respondent.

2. While this writ petition was pending, the respondent has filed Misc. Civil Application No.327/2002 praying that copy of the consent terms in the matter between the landlord and another tenant V.G. Kamat dated 11.4.2001 be taken on record and the Court may pass appropriate orders as the Court deems fit, including remand of the case. In this application, it is asserted that while the proceedings against the respondent were pending, the landlord has entered into consent terms in respect of the neighbouring premises (Southern Part) of the said premises and, therefore, the ground of personal

requirement does not survive due to this subsequent development. This application also asserts that the main reason for instituting the eviction proceedings against the respondent was that the suit house was required for the requirement of the family of the landlord to come to Margao for the children to study, which requirement is no longer subsisting. It is also asserted that the original petitioner has died and having regard to the composition of the present family of his children, the property already received in possession from another tenant Shri Kamat would satisfy the present requirement of the landlord. It is on this basis, it is pleaded in this application that in view of the abovesaid subsequent developments, which have eclipsed the requirement of the landlord, the Court would reckon those aspects and answer the issue against the landlord and if required to remand the case to the lower Court to ascertain whether the requirement is bona fide.

3. The petitioners have filed reply opposing the said application for the reasons noted in the reply/affidavit. Besides, the petitioners have filed separate application being Misc. Civil Application No.515/2003 praying that in view of the subsequent development that the respondent has already retired as an Editor of the daily 'Rashtramat' his earlier defence that

the altrnative premises which has become available to him was inconvenient, does not survive any longer-as it is not imperative for the respondent to reside at Aquem, Margao and he can occupy the premises acquired at Porvorim. It is prayed that this development be taken into account in the event the Court was to seriously consider the subsequent events pressed into service on behalf of the respondent.

4. Adverting to the first ground, namely, personal bonafide requirement of the landlord and his family, the case made out in the petition by the landlord/original petitioner was that the petitioner having returned from Africa for good to Goa in April, 1986 and that he has five children, out of which two were schooling at the relevant time at Margao, the entire suit house was required for his bonafide occupation. The petition also discloses that the petitioner has filed another eviction petition against tenant (V.G. Kamat) occupying the southern part of the said house, on the ground of personal bonafide requirement. In other words, it is clearly asserted that the requirement of the landlord for himself and his family was of the entire house, namely the northern as well as southern part. The petition also asserts that his family was presently staying in the ancestral house which was insufficient and

cannot accommodate his entire family, comprising of grown up children. The application also asserts that the original petitioner had no other house of his own in Margao city. The case as made out by the original petitioner/ landlord was resisted by the respondent. According to the respondent, the claim of the petitioners was not bonafide. The parties adduced evidence in support of their respective claims. The Rent Controller, upon analysing the materials on record, accepted the case made out by the original petitioner/landlord that his requirement of the suit premises was bonafide for himself and his family. The reasons which weighed with the Rent Controller to accept that the petitioner's claim can be discerned from the following portion of his Judgment, which reads, thus :

> "In his evidence applicant has established that he bonafide requires for his own occupation and his family members suit premises which is a residential house at Aquem Alto in Margao city and that he is not occupying a residential house of his own in the city concerned. Admittedly the landlord/applicant is staying in a common ancestral house in Benaulim village beyond a distance of 4 kms. As to ownership of the suit premises of the applicant by virtue of inventory proceedings is not disputed by the tenant/respondent. Admittedly suit premises at Aquem Alto, Margao is within a distance of 2 Kms. from Margao Municipality. It is also not disputed that two children of the applicant are studying in Margao School and have to travel to Margao city from Benaulim village where they reside in the common ancestral house along with applicant, their

mother and the sister in law. Out of five children of the applicant three children are abroad. The brother of the applicant when comes to Goa with his family also stays in the same ancestral common house at Benaulim as per the evidence on record. As observed in the decision reported in RCJ 1988 Vol. II page 36 by the Calcutta High Court for the landlord to recover possession of his own premises sufficiency of accommodation is not enough but suitability of accommodation has to be seen. It is held by Delhi High Court as reported in RCJ 1988 Vol. I page 723 that landlord must have a legal right to live in a particular premises. The decision of Delhi High Court reported in AIR 1990 NOC 2 (Delhi) also held that as to requirement of landlord must be given due importance for suitable accommodation. The decision reported in RCJ 1977 Vol. I page 38 of Madras High Court holds that in a case for bonafide requirement of land, he can choose any premises owned by him for his personal occupation and it is not for the tenant to dictate the choice. The present residence of the applicant in Benaulim village no way bars the applicant/landlord to have a house in Margao city. The right accrues to the landlord to recover possession of a residential house in a city in case the landlord is not occupying a residential house in the city by virtue of provisions of Section 23(1)(a) and there is no need to establish whether the accommodation presently occupied by the landlord in a village is sufficient. The present residence of the applicant is admittedly not in the city of Margao but in the village Benaulim. The residence of the applicant is admittedly not in the city of Margao but in the village Benaulim. The provisions of the said Section 23 of the Act provides for landlord to have premises in city and the same is not provided in law for the tenant. The respondent/tenant has not made out any ulterior motive of the landlord or extraneous consideration in trying to recover possession from the tenant on a higher rent. The applicant on the other hand established his genuine and real need of the suit premises."

5. Against this decision, the respondent carried the matter in appeal and, while considering the plea of bonafide retirement, the fulcrum of the reasoning of the appellate Authority, is as follows :

> "The only point which is required to be seen is whether the requirement of the suit premises by the landlord is bonafide or not. In the original application dated 3.9.1986 at para 7, the Respondent landlord submitted that he needs the suit premises because two of his five children are schooling in Margao. At para 10, he also stated that he did not have comfortable house of his own in Margao City. During the course of evidence recorded on 12.10.90 and 14.1.91 in another case No.BLDG/100/ARC III/86, which is on record, in the appellate file, the Appellant submitted that his two school children are no longer staying with him at Benaulim but in U.K. His brother is also staying in U.K. with his family. It is, therefore, clear that the Appellant requires the suit premises for his own stay alongwith his wife in the city of Margao rather than the village, Benaulim. This cannot be a sufficient ground for evicting the Appellant/tenant. In any case, the comparative hardship caused to the tenant is more than that caused to the landlord."

6. Besides, the appellate Court went on to observe, while distinguishing the decision in Mohanlal Jain v/s. Mohanlal and another, reported in 1973 RCJ 249, that in the present case, the application was not based on insufficiency of the landlord's present accommodation, but its unsuitability. The appellate Court has also noted that the bonafide requirement of the

landlord was not put in issue by the respondent on the ground that he was not liable to be evicted because the landlord had another tenanted premises. The appellate Court further noted that in any case, it has come on record that the landlord has instituted two separate proceedings in respect of his two tenanted buildings at Margao. The appellate Court then went on to observe that the comparative hardships caused to the landlord and the tenant, will have to ascertained and the hardship caused to the tenant will have to be kept in mind. The appellate Court then went on to observe that under the provision of Goa Rent Control Act, there is no requirement of law regarding question of suitability or otherwise and such a requirement cannot be read into Section 22 and 23(1)(a)(i) of the Goa Act. The appellate Court whilst adverting to the Premabai v/s. Rukminibai Joshi, reported in AIR 1982 Goa 17, has observed that it is not in issue in the present case that the landlord was incompetent to file two separate suits against two tenants to recover possession on the ground of bonafide requirement because the respondent did not object to the filing of the eviction proceedings on this ground; whereas the landlord not only disclosed in the original petition as well as in the evidence that two separate suits have been filed for eviction, but also asserted that the entire suit house was required bonafide for his

as well as his family's use. The appellate Court also noted that the present case was not the one of additional accommodation required by the landlord under Section 23(3) of the Goa Act, but for recovery of tenanted premises for bonafide occupation, while rejecting the argument of the respondent of applying considerations available under sub-Section (3) of Section 23 of the Goa Act to the fact situation of the present case. At the end, the appellate Court has noted as follows :

> " ... Taking all these decisions and arguments into consideration and after assessing the comparative hardships of both the parties, we hold that the requirement of the suit premises by the landlord is not bonafide and hence set aside the finding of the lower court on this issue."

7. According to the Counsel for the petitioners, the appellate Court has clearly misdirected itself in taking into account considerations which were not germane to examine the claim of possession under Section 23(1)(a)(i) of the Goa Act for the requirement of the landlord. According to the petitioners, the appellate Court has committed manifest error, for which reason, this Court in exercise of writ jurisdiction is duty-bound to remedy the same. It is contended that the requirement of Section 23(1)(a)(i) and even reading the same along with Section 25 of the Goa Act, what is required to be seen is whether the landlord is not

occupying a residential building of his own in City where the tenanted rooms are situated and that he bonafide requires the same for his own and the occupation of his family. It is then contended that in the present case, the landlord has not only pleaded, but also established that position, as can be seen from the evidence on record. However, the appellate Court has applied the test of whether the requirement of the landlord was bonafide, but also "reasonable", which is not the requirement under the Goa Act. Besides, the appellate Court has invoked the principle of 'comparable hardship' while considering the claim of the landlord under Section 23(1)(a)(i) of the Goa Act, which is unsustainable in law. Inasmuch as, the issue of comparative hardship, has no relevance to the scheme of the Goa Act and, at any rate, that is of no consequence while considering the claim of bonafide requirement of the landlord. It is also contended that there is no express provision of examining issue of comparative hardship. Besides, it is contended that, the approach of the appellate Court cannot be sustained as the Rent Controller had examined all the aspects of the matter in deciding the issue in question and the appellate Court has not reversed the matrial opinion expressed by the Rent Controller in that behalf, but answered the issue in favour of the respondent mainly on the basis that the landlord required

the suit premises for his own stay along with his wife in the city of Margao rather than the Village Benaulim and that cannot be a sufficient ground for evicting the tenant. For this purpose, the appellate Court has taken into account the fact that the two school going children were no longer staying with the landlord at Benaulim, but in U.K. and the landlord's brother was also staying in U.K. with his family. The learned Counsel contends that even other reasons recorded by the appellate Court are not germane for deciding the issue in question; whereas the appellate Court ought to have maintained the order of possession as passed by the Court below.

8. On the other hand, learned Counsel for the respondent contends that the requirements of Section 23(1)(a)(i) have not been fulfilled in the present case, and in that sense the finding recorded by the appellate Court does not merit interference. It is contended that it is on record that the landlord was having more than one house (i.e. at Benaulim and Margao); whereas, the landlord having failed to indicate as to why one house has been preferred against the other, no relief of possession can be granted to such a landlord. It is further contended that the present accommodation occupied by the landlord was hardly 4 kms. from the suit house though in a separate locality, inasmuch as ancestral

house of the landlord was at Benaulim; whereas the suit premises is in Margao City. It is contended that for all practical purposes, both the houses were in the same locality and merely because two houses are in two different places under separate Municipal limits, the landlord cannot be permitted to take advantage of the provisions of Section 23(1)(a)(i) on such technical argument. On the other hand, since both the houses are virtually located in the same area, the ground for eviction under this provision was not available. It is next contended that the ancestral house where the landlord was co-owner along with his brother, cannot be excluded from the consideration and if that was to be taken into account, the requirement of the landlord cannot be said to be bonafide. Learned Counsel also made serious grievance that the Rent Controller framed issue No.3 i.e. whether the opponent proves that the southern part of H.No.90 which the applicant has sought, is sufficient for the occupation of his family ? However, has not adjudicated the said issue at all. According to the respondent, the southern and northern parts of the house are symmetrical and identical, each having 143 sq. metres area respectively. It is contended that the suit premises consists of six rooms, comprising of a living room, dining room, two bedrooms, kitchen and in addition there are two corridors - one in the front side and the

other at the rear including a bathroom and W.C. There was no justification from the landlord to claim possession of the entire suit house admeasuirng 286 sq. metres, because each unit on the northern and southern part was independent. It is then contended that having regard to the subsequent developments which are already referred to above, the ground of bonafide requirement would not survive for consideration. It is also contended that although there is no express provision to consider comparative hardship between the landlord and the tenant, but, that is the principle underlying sub-Section (3), the appellate Court was justified in applying the said principle to the present case, although under Section 23(1)(a)(i). It is also contended that the subsequent fact of respondent having ceased to be the Editor, cannot be the basis for answering the ground in question in favour of the landlord.

9. Having gone through the relevant records with the assistance of the Counsel for the parties and on considering the rival submissions, I have no hesitation in taking a view that the appellate Court has committed manifest error in answering the issue of bonafide requirement against the landlord which has resulted in serious miscarriage of justice. The appellate Court has, to my mind, misdirected itself in reversing the well

considered conclusion reached by the Rent Controller, which was cogent and upon analysing of all the relevant materials on record. I find force in the submission of the petitioner that the appellate Court has decided the issue on matter which was not germane. Indeed, the application for eviction, in question, was filed as back as in 1986 and due to passage of time because of the pendency of the proceedings at different levels, the cause which was originally set up in the said application has not remained the same. The fact remains that the landlord clearly pleaded as well as established the fact that he has five children, out of which, two were schooling at the relevant time at Margao where the suit premises is situated. It has also been pleaded and established that the present ancestral accommodation was small and cannot accommodate comfortably the entire family of the landlord, comprising of grown up children. It is in that backdrop, the landlord has filed the present proceedings, not only in respect of the portion in possession of the respondent, but also against the other tenant, i.e. southern part. It is also pleaded and established that the landlord had no other residential building of his own in the city of Margao, for his occupation as well as for the members of his family. These findings of fact have been recorded by the Rent Controller, which have not been and could not be

disturbed. The requirement under Section 23(1)(a)(i) is that the landlord is not occupying residential building of his own in the city, town or Village; He must require it for his own occupation or for the occupation of any member of his family. No more and no less. However, in view of Section 25 of the Goa Act, the additional requirement as to whether the claim of the landlord is bonafide, is also required to be considered. In other words, for invoking ground under Section 23(1)(a)(i), it is sufficient for the landlord to assert that he requires the premises and that requirement is bonafide. Bonafide requirement does not mean that it should be dire and compelling requirement, as is well settled by cetena of decisions. It is enough for the landlord to satisfy that he requires the suit premises bonafide and must show that the same is needed for his occupation. Bonafide requirement also does not mean absolute need or absolute requirement. It is also well settled that the landlord is the best judge of his residential requirements and he has complete freedom in that behalf. It is no concern of the Courts to dictate to the landlord as to how, in what manner, he should live or to prescribe for him a residential standard of their own. There is no law which deprives the landlord of the beneficial enjoyment of his property. Ordinarily speaking, the landlord, if he says he wished to use

premises of which he is the owner, he is entitled to do so. What the Rent Act endeavours to provide for, is the case of a landlord who evicts the existing tenants in order that he may let them to another tenant at a rent, or extract a higher rent from the tenant on a threat of eviction. The abovesaid legal position is no more res integra. (see Rena Drego vs. Lalchand Soni, (1998) 2 SCC 341; Dattatraya L. Kamble vs. Abdul Rasul Moulali Kotkunde and anr., 1994(4) SCC 1; Raghunath G. Panhale (Dead) by LRs. v/s. Ghagnalal Sundarji and Co., (1999) 8 SCC 1; Atma S.Berar vs. Mukhtiar Singh, (2003) 2 SCC 3, paras 7 and 12 and Mst. Bega Begum and ors. vs. Abdul Ahad Khan (dead) by L.Rs. and ors. (1979) 1 SCC 273, paras 12 and 13). Applying the above test, to my mind, no fault can be found with the conclusion reached by the Rent Controller in answering the ground in question in favour of the landlord because the landlord has fully complied with the requirement of Section 23(1)(a)(i). The appellate Court, however, proceeded entirely on matters which were not germane. The appellate Court found that the two school going children are no longer staying with the landlord at Benaulim, but in U.K. That development cannot be the basis for questioning the bonafide requirement of the landlord which existed at the time of institution of the application and also during the trial of the petition.

Another reason which has weighed with the appellate Court is that the landlord's brother was also staying in U.K. with his family. Even this reason is of no consequence, because the landlord clearly asserted and has established that his brother was visiting Goa at least once in a year with his family and the present ancestral accommodation was insufficient to accommodate the entire family, and particularly having regard to the grown up children of the landlord. The appellate Court then went on to observe that the landlord was wanting to stay along with his wife in the city of Margao rather than Village of Benaulim. This was not the case made out by the landlord in the application as filed or the evidence recorded during the trial; whereas, the Rent Controller has examined all the relevant aspects to answer the issue in favour of the landlord. The appellate Court then proceeded to observe that comparative hardship will be caused to the tenant. Again, this reasoning is wholly untenable. Inasmuch as, firstly there is no express provision in the Goa Act, requiring the Court to examine the issue of comparative hardship before ordering eviction of the tenant, as is the scheme of several other State Legislations, including the Bombay Rent Act. In any case, factum of comparative hardship even if tilted in favour of the tenant cannot be the basis to hold that the requirement of the landlord is not bonafide. In the

circumstances, I find force in the argument of Shri Sonak that the Court will have to respect the legislative scheme of the State enactment. While construing the provisions of the Goa Act, we cannot and ought not to import parameters applicable in respect of Legislation of another State. To buttress this proposition, reliance has rightly been placed on the decision of the Apex Court in Dr. M.K. Salpekar v/s. Sunil Kumar Chandheri and ors., reported in 1988(4) SCC 21 (para 6). Accordingly, the reasons which have weighed with the appellate Court for answering the issue against the landlord, on the basis of comparative hardship in favour of the tenant, cannot be sustained and is manifest error committed by the appellate Court. The appellate Court has observed that the application as filed by the landlord is not based on insufficiency, but one of unsuitability. This observation of the appellate Court is again an error apparent on the face of the record, because the application as filed clearly asserts about not only the school going children, but also insufficiency, because the ancestral house was small and was difficult to accommodate the growing children of the landlord as well as the family of his brother, whenever he visits Goa, which is at least once a year. In any case, the argument of insufficiency or unsuitability would have been, at best, relevant if ground under Section 23(3) of the Goa

Act was to be invoked by the landlord. But, in cases, where the ground under Section 23(1)(a)(i) is pressed into service, in such a case, going into the question of insufficiency or unsuitability, will tantamount to examining the question of "reasonableness" of the requirement; And that is not the scheme of provisions of the Goa Act, because the Goa Act enables the landlord to invoke the said ground merely on the basis that the landlord requires the premises bonafide. No more and no less. There is perceptible difference in the provisions of cognate Act such as Bombay Rent Act, where the landlord's requirement should not only be bonafide, but also reasonable. On the other hand, as observed earlier, the landlord has to only show that the requirement is not a mere wish or fancy of the landlord, but the same is need or necessity. Understood thus, neither the approach nor the reason or conclusion reached by the appellate Court can be sustained either in fact or in law.

10. That brings me to the argument canvassed on behalf of the respondent. I find no substance in the argument that the requirement of Section 23(1)(a)(i) of the Goa Act has not been fulfilled by the landlord. On the other hand, there is not only necessary pleading in the petition as filed, but even the evidence adduced on behalf of the landlord clearly spells out the requirement

of that provision. The finding of fact, as is rightly recorded by the Rent Controller in this behalf, is unexceptionable. Similarly, there is no substance in the grievance made on behalf of the respondent that it was incumbent upon the landlord to indicate as to why one house has been preferred as against the other. That argument could be available if the landlord had two houses in the same city. In the present case, the landlord was occupying his ancestral house in Village Benaulim; whereas the suit house is in Margao. It is also asserted that having regard to the composition of the landlord's family, as well as his brother's family which also often visits Goa and stays in the said houses. Understood thus, reliance placed on the decision in Shiv Sarup Gupta v/s. Dr. Mahesh Chand Gupta, reported in (1996) 6 SCC 222 will be of no avail inasmuch as in that case, the landlord had some other premises in his possession. That argument is not available in the present case - Whereas, the decision of the Apex Court in the case of Dattatraya Laxman Kamble v/s. Abdul Rasul Moulali Kotkunde and anr., (supra) though relied by the respondent, would clearly answer the grievance of the respondent as it observes that when the landlord says that he needs the building for his own occupation there is no doubt that he has to prove it. But there is no warrant for presuming that his need is not bonafide.

That decision in para 16 also observes that the Statute enjoins that the Court should be satisfied of his requirement. So the Court would look into broad aspects. It is also observed that in appropriate cases, it is open to the Court to presume that the landlord's requirement is bonafide and put the contesting tenant to the burden to show how the requirement is not bonafide. Accordingly, this decision which is, in fact, pressed into service by the respondent, if read in its proper perspective, goes against the respondent, having regard to the fact situation of the present case. Besides, the application as filed by the Landlord and the evidence on record clearly establish that the landlord was not claiming possession only from the respondent/tenant, but also in respect of the other portion of the suit house, i.e. southern part from another tenant. Accordingly, the landlord has gone to the Court with a clear case that he would require the entire suit house for his personal occupation, as well as for his family. That case made out by the landlord cannot be doubted and there is no material on record at least brought to my notice, to question that position. In fact, this reason would also answer the argument pressed into service on behalf of the respondent that in view of the subsequent development of acquisition of southern part of the suit house the requirement of the landlord is eclipsed. As is well

settled in Gaya Prasad vs. Pradeep Srivastava, 2001(2) SCC 604, it is observed that any subsequent event during the pendency of the proceedings cannot be the basis to nonsuit the plaintiff, but it is only when the need is completely eclipsed, that such an event could be pressed into service. Whereas, in the present case, from the record, it is seen that the need of the landlord and his family still subsists, especially when right from the institution of the petition, the case made out is that the landlord would require the entire suit house for the requirement of his family and specially in view of the growing children who are now stated to be married. Even the ground pressed into service on behalf of the respondent that the requirement of school going children is no more subsisting, so as to answer the issue in question against the landlord, does not commend to me. As mentioned earlier, the cause of action as on the date of the institution of the petition would be relevant. As observed in Gaya Prasad's case (supra, paras 10 and 15) in view of the unfortunate notoriety of judicial tardiness acquired by the legal system prevailing in our Country, it would be pernicious and unjust to shut the door before an applicant, just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, such developments

are bound to happen. That alone cannot be the basis for non-suiting the plaintiff at this distance of time. It was vehemently argued on behalf of the respondent that the Rent Controller had framed issue No.3 referred to above. But has not adjudicated the same at all. In my opinion, there is no substance even in this grievance. In the first place, on careful reading the reasons recorded by the Rent Controller in its totality, the issue stands answered against the respondent-tenant. Besides, no grievance was made before the appellate Court that the decision of the Rent Controller was bad for not adjudicating the said issue at all. On the other hand, from the observations made by the appellate Court, it would appear that perhaps that issue has not only been not argued, but has been conceded because the appellate Court in para 6 has clearly observed that it was not contended on behalf of the respondent that he is not liable to be evicted, because the landlord was having another tenanted premises. The appellate Court, on the other hand, has noticed that the landlord had filed two separate proceedings in respect of two tenanted premises at Margao. Moreover, it is again observed that the respondent did not object to the proceedings on the ground that the landlord has instituted two separate proceedings against his tenants for recovery of possession. If that is so, no fault can be found with

the conclusion reached by the Rent Controller and this ground cannot be the basis for questioning the correctness of that decision. It is fairly conceded that no such specific objection has been taken in the Memo of Appeal filed before the appellate Court or for that matter in the reply filed before this Court. In the circumstances, the respondent cannot be permitted to canvass this point across the Bar and in the process take the petitioners by surprise. The other argument of the respondent that the landlord will not use the suit premises for the purpose for which the respondent's eviction is sought, is entirely misplaced. There is no foundation for this plea. Besides, that apprehension cannot be the basis for doubting either the bonafide of the landlord or his requirement of the suit premises. Besides, this argument overlooks the mandate of Section 27 of the Act which enables the tenant to move the Rent Controller for restoration of possession of the suit premises if the landlord fails to use the premises within the specified time for the purpose for which the tenant came to be evicted. Similar contention came up for consideration before the Apex Court in the case of Smt. Rumkubai since deceased by L.Rs., and ors. vs. Hajarimal Dhokalchand Chandak and ors., reported in AIR 1999 SC 3089. In para 14 of that decision, the Apex Court while referring to similar provision in the Bombay

Rent Act, being Section 17 has repelled that argument. For the aforesaid reasons, the conclusion reached by the appellate Court on the ground of bona fide requirement of the landlord cannot be sustained and, therefore, the same will have to be set aside and instead the finding and the conclusion reached by the Rent Controller in that behalf will have to be restored.

11. The matter could have been resolved on the above basis alone. But since the other ground of eviction under Section 22(2)(e) of the Goa Act, namely, the tenant having secured alternate accommodation is also pressed into service, it has become necessary for me to address in that behalf. In so far as this ground is concerned, it is not in dispute that the respondent has acquired another premises at Porvorim. Acquisition of that premises is, in that sense, not disputed. It is on that basis, the Rent Controller proceeded to answer the issue under Section 22(2)(e) against the respondent. The Rent Controller has also rejected the contention canvassed on behalf of the respondent that the newly acquired premises at Porvorim was not suitable, on the reasoning that the suitability of such accommodation was not the defence available to the tenant in view of the scheme of provisions of the Goa Act. The appellate Court, on the other hand, proceeded to answer the ground

in favour of the respondent on far-fetched reasoning that the respondent would suffer comparative hardship. Inasmuch as, although it held that the issue of suitability was not available, but still answered the said ground in favour of the respondent. Before we proceed to examine the rival contentions, it is apposite to reproduce the relevant section as it obtained at the relevant time. Section 22(2)(e) reads, thus :

> "22. **Grounds of eviction.-(1)** A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf.
>
> (2) If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application is satisfied -
>
> (a) ...
> (b) ...
> (c) ...
> (d) ...
> (e) that the tenant of a dwelling house has, whether before or after the commencement of this Act, built, acquired vacant possession of, or been allotted a residence ....
>
> the Controller shall make an order directing the tenant to put the landlord in possession of the building; and if the Controller is not so satisfied he shall make an order rejecting the application:"

On the language of the above provision, it is plainly clear that once the tenant has built, acquired vacant possession of, or been allotted a residence, the ground in question could be invoked against such a tenant. The

residence so acquired could be in any part of the city or anywhere. Moreover, the defence that the said acquired residence was unsuitable, was not provided by the Goa Act, as is the provision in the cognate Act, such as Bombay Rent Act. However, it is only in 1992, the Act was amended, so as to insert the following at the end of Clause (e), which reads thus:

> " in place where such dwelling house is situated".

Relying on this amendment, it was contended that since the acquisition of premises at Porvorim were not in the same place where the suit house is situated; whereas the suit house was situated at Margao at a distance of about 40 kms., that aspect was germane. This contention has been rejected by both the Courts below and that view is unexceptionable. Because the above amendment came into force in 1992 and has only prospective application; whereas, the respondent has acquired the new premises at Porvorim before the said amended provision came into force. There is no dispute on this aspect. The appellate Court although having accepted that position, however, has yet answered the ground in favour of the respondent. Even the Counsel for the respondent, made an attempt to persuade me to sustain the said reasoning of

the appellate Court. It was argued that the house acquired by the respondent at Porvorim was at a distance of 40 kms. and not near Margao city, but near the city of Panaji and acquisition of such a house would not attract the rigours of Section 22(2)(e) of the Goa Act. It was contended on behalf of the respondent that if any other argument contrary to what has been canvassed on behalf of the respondent was accepted, that would result in absurdity because the Goa Act was not only applicable to the State of Goa, but also to the Union Territory of Daman and Diu. Accordingly, on that reasoning, acquisition of new premises by the tenant even in Daman and Diu, would attract rigours of eviction under Section 22(2)(e), which was clearly absurd. Learned Counsel was at pains to persuade me to accept his argument that considering the scheme of the Act and purposive construction thereof, the only conclusion would be that acquisition of the residential premises at Porvorim not being within the city, town or village where the suit premises is situated, cannot be a ground for eviction. The learned Counsel placed reliance on the decision of the Apex Court in District Mining Officer and ors. vs. Tata Iron and Steel Co. and anr., reported in (2001) 7 SCC 358 (para 18). Learned Counsel submits that the amendment introduced in 1992 was only curative in nature and would apply retrospectively. To buttress this

proposition, reliance is placed on the case of Channan Singh and another vs. Smt. Jai Kaur, reported in AIR 1970 SC 349 and Full Bench decision of Punjab and Haryana High Court in Moti Ram vs. Bakhwant Sing, reported in AIR 1968 P&H 141.

12. However, I find no substance in this argument. On the other hand, Mr. Sonak has rightly contended that the Court was obliged to examine the matter in the context of the provisions as it existed and in the process of accepting the the argument of purposive construction, this Court would be re-writing the provision in that regard. It is submitted that if the argument of the respondent was to be accepted, then there was no need of amending the said provision, as was done by the State Legislation. Learned Counsel contends that the Amending Act came into force only from 1992 and the same cannot be given retrospective effect, which fact has been rightly accepted by both the Courts below. The argument that the amendment was curative in nature and, therefore, retrospective, is also contested by Mr. Sonak by relying on the decision in the case of United Provinces vs. Atiqa Begum, reported in AIR 1941 FC 16 and in Garikapati vs. N. Subbiah Choudhry, reported in AIR 1957 SC 540. As rightly contended, it is well settled that in the context of Rent Control Legislations,

the amendments do not apply retrospectively, unless the Legislature says so in clear terms. Moreover, there is nothing in the Goa Act to suggest that the amendment is either declaratory or clarificatory in nature (see Motiram Ghelabhai (Dead) through LR. Maniram Motiram vs. Jagan Nagar (Dead) through LRs. & Ors. (1985) 2 SCC 279; Atma Ram Mittal vs. Ishwar Singh Punia, (1988) 4 SCC 284; Shyam Charan vs. Sheoji Bhai & Anr., (1977) 4 SCC 393; and Kishan alias Krishan Kumar etc., etc., vs. Manoj Kumar etc., etc., AIR 1998 SC 999.)

13. Having considered the above submissions, I have no hesitation in accepting the argument of Mr. Sonak for the petitioner. As mentioned earlier, the purport of Section 22(2)(e), as was applicable at the relevant time, was very clear that any acquisition of residential premises by tenant, was sufficient to attract rigours of that provision. In the present case, it is not in dispute that such a residential premises was acquired by the respondent. Therefore, the only argument of the respondent was one of nonsuitability of that residence. As mentioned earlier, expression 'suitable' has not been provided in Section 22(2)(e) of the Act, as is the scheme in the cognate Legislation such as Bombay Rent Act. Therefore, the argument of "suitability" of the new residence is of no avail and cannot be pressed

into service. To get over this position, the learned Counsel for the respondent then relied on the amendment of 1992 to contend that acquisition of residence anywhere, cannot be the basis for invoking Section 22(2)(e). If that argument was to be accepted, as rightly argued by Mr. Sonak, that would result in re-writing the said provision. If that construction was available, there was absolutely no need for the Legislature to amend the provision, so as to insert "in place where such dwelling house is situated". Therefore, to my mind, the amendment of 1992 cannot be said to be clarificatory or declaratory provision. Accordingly the same will have only prospective application, having regard to the dictum of the Federal Court in United Provinces vs. Atiqa Begum, (supra) and the Supreme Court in the case of Garikapati vs. N. Subbiah Choudhry (supra). In this view of the matter, I find no substance in the argument of the respondent that the ground under Section 22(2)(e) was not available to the landlord. On the other hand, having regard to the fact situation of the present case and the admitted position that the respondent has acquired residential premises at Porvorim, ground under Section 22(2)(e) as applicable at the relevant time, was clearly made out and the appellate Court has committed manifest error in applying the test of 'comparative hardship' so as to deny that ground to

the landlord. Accordingly, the view taken by the appellate Court on this ground also cannot be sustained in fact or in law, for which reason, the same is being set aside.

14. For the aforesaid reasons, this petition succeeds. The impugned Judgment and Order of the appellate Court is set aside and instead, the order of eviction passed by the Rent Controller in favour of the landlord/petitioner herein is restored on the grounds of personal requirement and the tenant having acquired alternative residential premises. Petition allowed. Rule made absolute with costs. The Civil Applications are also disposed of for the reasons recorded above.

15. At this stage, Mr. Usgaonkar, prays for stay of operation of this order. Mr. Sonak has no objection if the stay as prayed for is granted. Accordingly, operation of this order is stayed for a period of six weeks from today.

A.M. KHANWILKAR, J.

ssm.